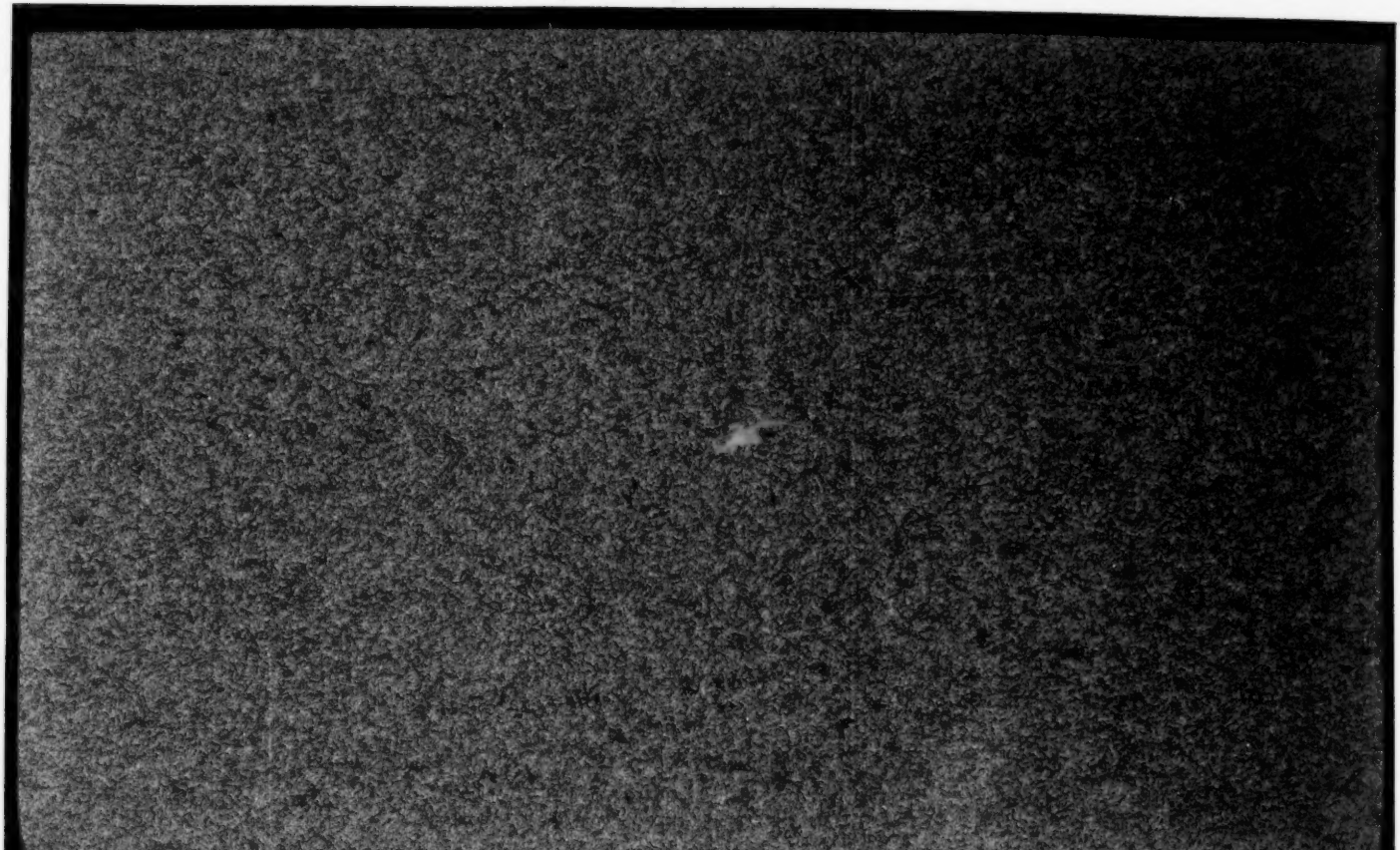

In the Supreme Court of the United States

OCTOBER TERM, 1932

No. —

UNITED STATES OF AMERICA, APPELLANT

v.

JOHN G. DARBY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO MOTION BY APPELLEE TO DISMISS OR AFFIRM

OPINION BELOW

The opinion of the District Court appears at R. 36–40.[1] It has not been reported.

GROUNDS OF APPELLEE'S MOTION

The principal ground alleged in the motion to dismiss or affirm (R. 51–52) is that this Court is without jurisdiction of the appeal in this case under

[1] References herein to the record refer to the pages of the typewritten record certified by the Clerk of the District Court.

the Criminal Appeals Act, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, Sec. 682), because the District Court in sustaining the demurrer to the indictment based its decision upon its construction of the indictment rather than upon its construction of the statute.

ARGUMENT

WHERE THE DISTRICT COURT HOLDS, AS IN THIS CASE, THAT THE ACTS CHARGED IN THE INDICTMENT ARE NOT WITHIN THE CONDEMNATION OF THE STATUTE, A CONSTRUCTION OF THE STATUTE IS NECESSARILY INVOLVED.

The foregoing proposition is fully sustained by *United States* v. *Birdsall*, 233 U. S. 223, 230, and *United States* v. *Patten*, 226 U. S. 525, 535. In the latter case, this Court said:

> The court could not have decided, as it did, that the acts charged are not within the condemnation of the statute without first ascertaining what it does condemn, which, of course, involved its construction.

The sole subject of discussion in the opinion of the court below was whether the acts charged in this indictment are within the condemnation of the statute.[2] It is sufficient for the purpose of this brief

[2] The opinion quoted in the Statement in Opposition to Jurisdiction (R. 49), filed simultaneously with the Motion to Dismiss or Affirm, is a memorandum opinion which does not appear in the record certified by the Clerk of the District Court.

to quote the court's opening and closing words (R. 36):

> The single question before the court is whether the following allegations as set forth in the indictment of the defendant, John G. Darby, Assistant Cashier of the Montgomery County National Bank of Rockville, Maryland, are sufficient to meet the requirements of the statute defining the crime of false entry by officers, employees, etc., of national banks.
>
> * * * * *
>
> Whether for one reason or another, as a result of the conclusion here reached, it may not be possible to bring the alleged unlawful conduct of the defendant within the language of one or more of the other provisions of the statute, is a matter with which we are not here concerned. The sole problem presented is one of construction. It is not the function of the court to strain the language of a statute unless there is clear justification for so doing, regardless of the practical arguments that may be advanced therefor.
>
> Accordingly, the demurrer will be sustained.

In other words, the sole question determined was whether the entry in the discount register of the details of a note, including the transcription into that register of an alleged forged signature of a co-maker or endorser, was within the condemnation

of the statute forbidding the making of false entries.

We know of no other case and none is cited by the respondent in which any court has construed Section 5209 R. S. as amended as having no application to the deliberate entry upon the books of a national bank of the name of a person as the maker or endorser of a note with knowledge that the note was not signed or endorsed by the person named. We contend that the statute when properly construed prohibits such an entry and that the court below misconstrued the statute in holding otherwise.

CONCLUSION

The motion to dismiss or affirm should be denied.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

JANUARY, 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1933